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10
11 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13
14 In the Matter of the Accusation Against:

15 **Carl Dean Hasting**
5513 Oakfen Ct
16 Agoura Hills, CA 91301

17 **Certified Public Accountant**
Certificate No. CPA 45770

18 Respondent

Case No. AC- 2010-15

ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
23 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

24 2. On or about August 1, 1986, the California Board of Accountancy issued Certified
25 Public Accountant Number CPA 45770 to Carl Dean Hasting (Respondent). The Certified Public
26 Accountant Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on February 28, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of Section 5100 of the Business and Professions Code, which provides, in relevant part, that, after notice and hearing, the Board may revoke, suspend or refuse to renew any permit or certificate granted for unprofessional conduct which includes, but is not limited to, one or any combination of the causes specified therein, including willful violations of the Accountancy Act and willful violations of rules and regulations promulgated by the Board.

4. Business and Professions Code¹ Sections 118(b) and 5109 provide in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not deprive the Board of its authority to investigate, or to institute or continue a disciplinary proceeding against a licensee upon any ground provided by law, or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

STATUTORY AND REGULATORY PROVISIONS

5. Section 5100 states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

...

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that

¹ All statutory references are to the Business and Professions Code unless otherwise indicated.

1 indicate a lack of competency in the practice of public accountancy or in the performance of the
2 bookkeeping operations described in Section 5052.”

3 ...

4 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
5 board under the authority granted under this chapter.”

6 ...

7 "(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.”

8 “(j) Knowing preparation, publication, or dissemination of false, fraudulent, or
9 materially misleading financial statements, reports, or information.”

10 "(k) Embezzlement, theft, misappropriation of funds or property, or obtaining
11 money, property, or other valuable consideration by fraudulent means or false pretenses.”

12 6. Licensees are required by Board Rule 5 to comply with all Board rules, including
13 Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall
14 comply with all applicable professional standards.

15 7. Business and Professions Code section 125 provides, in pertinent part, that any
16 licensee is guilty of a misdemeanor and subject to the disciplinary provisions of this code
17 applicable to him, who conspires with a non-licensee to violate any provision of this code.

18 APPLICABLE PROFESSIONAL STANDARDS

19 8. Professional standards or standards of practice pertinent² to this Accusation include,
20 without limitation:

21 A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)³
22 including:

23 (1) Section 10.21 (Knowledge of Client’s Omission), provides that:

24 “[a] practitioner who, having been retained by a client with respect to a matter
25 administered by the Internal Revenue Service, knows that the client has not
26 complied with the revenue laws of the United States or has made an error or

26 ² All references herein to standards and other authoritative literature are to the versions in
27 effect at the time the shelters were being developed, marketed or sold.

28 ³ 31 CFR 10 is also referred to as “Circular 230” or Section 10 of the IRS Regulations.
Among other things, Circular 230 governs practice by CPAs before the IRS.

1 omission from any return, document, affidavit, or other paper which the client
2 submitted or executed under the revenue laws of the United States, must advise the
3 client promptly of the fact of such noncompliance, error, or omission. The
4 practitioner must advise the client of the consequences as provided under the Code
5 and regulations of such noncompliance, error, or omission."

6 (2) Section 10.22(a) (Diligence as to Accuracy), provides that, in general, a
7 practitioner must exercise due diligence:

8 "(1) In preparing or assisting in the preparation of, approving, and filing tax
9 returns, documents, affidavits, and other papers relating to Internal Revenue
10 Service matters;

11 (2) In determining the correctness of oral or written representations made by the
12 practitioner to the Department of the Treasury; and

13 (3) In determining the correctness of oral or written representations made by the
14 practitioner to clients with reference to any matter administered by the Internal
15 Revenue Service."

16 (3) Section 10.30 (Solicitation), provides that a practitioner may not, with
17 respect to any Internal Revenue Service matter, in any way use or participate in the use of any
18 form or public communication or private solicitation containing a false, fraudulent, or coercive
19 statement or claim; or a misleading or deceptive statement or claim.

20 (4) Section 10.34 (Standards for Advising with Respect to Tax Return Positions
21 and for Preparing or Signing Returns), provides that a practitioner may not sign a tax return as a
22 preparer if the practitioner determines that the tax return contains a position that does not have a
23 realistic possibility of being sustained on its merits (the "realistic possibility standard") unless the
24 position is not frivolous and is adequately disclosed to the Internal Revenue Service.

25 B. American Institute of Certified Public Accountants (AICPA) Code of
26 Professional Conduct, which includes Section I - Principles and Section II - Rules. Both the
27 Principles (Articles III and VI) and the Rules are relevant to the allegations herein.

28 (1) Rule 102 (Integrity and Objectivity), provides that:

"In the performance of any professional service, a member shall maintain objectivity
and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or
subordinate his or her judgment to others."

1 (2) Rule 102.2 (Conflicts of Interest), provides that:

2 "A member shall be considered to have knowingly misrepresented facts in violation of rule
3 102. . . when he or she knowingly—

4 a. Makes, or permits or directs another to make, materially false and
5 misleading entries in an entity's financial statements or records; or

6 b. Fails to correct an entity's financial statements or records that are
7 materially false and misleading when he or she has the authority to record an entry; or

8 c. Signs, or permits or directs another to sign, a document containing
9 materially false and misleading information."

10 (3) Rule 102-4 (Subordination of Judgment by a Member), provides that:

11 "Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts
12 or subordinating his or her judgment when performing professional services. Under this rule, if a
13 member and his or her supervisor have a disagreement or dispute relating to the preparation of
14 financial statements or the recording of transactions, the member should take the following steps
15 to ensure that the situation does not constitute a subordination of judgment:

16 "1. The member should consider whether (a) the entry or the failure to record
17 a transaction in the records, or (b) the financial statement presentation or the nature or omission of
18 disclosure in the financial statements, as proposed by the supervisor, represents the use of an
19 acceptable alternative and does not materially misrepresent the facts. If, after appropriate research
20 or consultation, the member concludes that the matter has authoritative support and/or does not
21 result in a material misrepresentation, the member need do nothing further.

22 2. If the member concludes that the financial statements or records could be
23 materially misstated, the member should make his or her concerns known to the appropriate
24 higher level(s) of management within the organization (for example, the supervisor's immediate
25 superior, senior management, the audit committee or equivalent, the board of directors, the
26 company's owners). The member should consider documenting his or her understanding of the
27 facts, the accounting principles involved, the application of those principles to the facts, and the
28 parties with whom these matters were discussed.

1 3. If, after discussing his or her concerns with the appropriate person(s) in
2 the organization, the member concludes that appropriate action was not taken, he or she should
3 consider his or her continuing relationship with the employer. The member also should consider
4 any responsibility that may exist to communicate to third parties, such as regulatory authorities or
5 the employer's (former employer's) external accountant. In this connection, the member may wish
6 to consult with his or her legal counsel.

7 4. The member should at all times be cognizant of his or her obligations
8 under interpretation 102-3 [ET section 102.04].”

9 (4) Rule 201 (General Standards), provides that:

10 “A member shall comply with the following standards and with any interpretations thereof
11 by bodies designated by Council.

12 A. Professional Competence. Undertake only those professional services that
13 the member or the member's firm can reasonably expect to be completed with professional
14 competence.

15 B. Due Professional Care. Exercise due professional care in the performance
16 of professional services.

17 C. Planning and Supervision. Adequately plan and supervise the performance
18 of professional services.

19 D. Sufficient Relevant Data. Obtain sufficient relevant data to afford a
20 reasonable basis for conclusions or recommendations in relation to any professional services
21 performed.”

22 (5) Rule 202 (Compliance With Standards), provides that:

23 “A member who performs auditing, review, compilation, management consulting, tax, or
24 other professional services shall comply with standards promulgated by bodies designated by
25 Council.”

26 (6) Rule 501 (Acts discreditable), provides that:

27 “A member shall not commit an act discreditable to the profession.”
28

1 (7) Rule 501-4 (Negligence in the Preparation of Financial Statements or
2 Records), provides that:

3 "A member shall be considered to have committed an act discreditable to the profession in
4 violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such
5 member—

6 a. Makes, or permits or directs another to make, materially false and
7 misleading entries in the financial statements or records of an entity; or

8 b. Fails to correct an entity's financial statements that are materially
9 false and misleading when the member has the authority to record an entry; or

10 c. Signs, or permits or directs another to sign, a document containing
11 materially false and misleading information."

12 (8) Rule 502 (Advertising and Other Forms of Solicitation), provides that: "A
13 member in public practice shall not seek to obtain clients by advertising or other forms of
14 solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion,
15 over-reaching, or harassing conduct is prohibited."

16 (9) Rule 502-2 (False, Misleading or Deceptive Acts in Advertising or
17 Solicitation), provides that:

18 "Advertising or other forms of solicitation that are false, misleading, or deceptive are not in
19 the public interest and are prohibited. Such activities include those that—

20 1. Create false or unjustified expectations of favorable results.

21 2. Imply the ability to influence any court, tribunal, regulatory agency, or
22 similar body or official.

23 3. Contain a representation that specific professional services in current
24 or future periods will be performed for a stated fee, estimated fee or fee range when it was likely
25 at the time of the representation that such fees would be substantially increased and the
26 prospective client was not advised of that likelihood.

27 4. Contain any other representations that would be likely to cause a
28 reasonable person to misunderstand or be deceived."

- 1 C. AICPA Statements on Standards for Tax Services⁴, including:
2 (1.) TS Section 100 - Tax Return Positions.
3 (2.) TS Section 600 - Knowledge of Error: Return Preparation.
4 (3.) TS Section 800 - Form and Content of Advice to Tax Payers.
5 D. The Internal Revenue Code, including:
6 “(1) 26 U.S.C. §6111 (Section 6111), which governs the registration of tax
7 shelters.

8 (2) 26 U.S.C. §6112 (Section 6112), which imposes certain obligations on the
9 organizer or seller of a “potentially abusive tax shelter.”

10 COST RECOVERY

11 9. Code Section 5107(a) provides, in pertinent part, that the Executive Officer of the
12 Board may request the administrative law judge, as part of the proposed decision in a disciplinary
13 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
14 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and
15 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
16 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of
17 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of
18 investigation and prosecution of the case.

19 PUBLIC PROTECTION

20 10. Code Section 5000.1 provides, as follows: “Protection of the public shall be the
21 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
22 and disciplinary functions. Whenever the protection of the public is inconsistent with other
23 interests sought to be promoted, the protection of the public shall be paramount.”

24 FACTUAL BACKGROUND

25 11. The subject matter of this Accusation is Respondent's participation in the
26 development, marketing, and implementation of certain tax shelter schemes by himself and other

27 ⁴ The AICPA *Statements on Standards for Tax Services*, are codified as “TS” with section
28 numbers, e.g., TS Section 100.

1 KPMG⁵ personnel, including senior partners and members of top management, which assisted
2 high net worth United States citizens to evade United States individual income taxes on billions of
3 dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax
4 shelters.^{6,7}

5 12. Respondent was an employee and then partner of KPMG LLP⁸ from about May 1997
6 through about November, 2003. Respondent worked in the Warner Center Offices in Los
7 Angeles, California. Respondent worked in the Personal Financial Planning (PFP) group, CaTS
8 ("Capital Transaction Strategies") group and Innovative Strategy (IS) group. Respondent became
9 a partner at KPMG in 1998 and remained a partner until he left KPMG LLP in 2003. Respondent
10 was responsible for marketing and implementing several illegal tax shelters described below.

11 13. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of
12 Facts attached to the Deferred Prosecution Agreement ("DPA") which KPMG entered with the
13 federal government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the
14

15
16 ⁵ At all times relevant to this Accusation, KPMG was a limited liability partnership
17 headquartered in New York, New York, with more than 90 offices nationwide, of which several
18 are in California. Among the California KPMG offices during the time period relevant herein
19 were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and Walnut Creek.
20 KPMG was one of the largest auditing firms in the world, providing audit services to many of the
21 largest corporations in the United States and elsewhere. KPMG also provided tax services to
22 corporate and individual clients, some of whom were very wealthy. These tax services included,
23 but were not limited to, preparing federal and state tax returns, providing tax planning and tax
24 advice, and representing clients, for example, in Internal Revenue Service ("IRS") and Franchise
25 Tax Board ("FTB") audits, and in Tax Court litigation with the IRS.

26 ⁶ The portion of KPMG's tax practice that specialized in providing tax advice to
27 individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP."
28 The KPMG group focused on designing, marketing, and implementing tax shelters for individual
clients was known at different times as CaTS ("Capital Transaction Strategies"), and IS
("Innovative Strategies").

⁷ KPMG personnel also formed alliances, operating agreements, and/or joint ventures with
outside persons, including former partners, employees, and others. KPMG also worked with law
firms/lawyers and with banks in implementing the FLIP, OPIS and BLIPS tax shelter
transactions. Significant activity and coordination regarding the design and implementation of
the tax shelters took place by California licensees or on behalf of California taxpayers.

⁸ KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating
several offices in California. KPMG was engaged in providing tax services to corporate and
individual clients and providing audit services to corporate, governmental and other clients. The
Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective
January 18, 2008. It is further referenced in paragraph 13.

1 Board, KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached
2 to the DPA (which was incorporated into Accusation AC-2006-28),

3 “through the conduct of certain KPMG tax leaders, partners, and employees,
4 during the period from 1996 through 2002, KPMG assisted high net worth
5 individuals to evade individual income taxes on billions of dollars by developing,
6 promoting, and implementing unregistered and fraudulent tax shelters. A number
7 of KPMG tax partners engaged in conduct that was unlawful and fraudulent...”
(Accusation, Paragraph 57, quoting DPA.)⁹

8 A copy of the DPA agreement and Statement of Facts is attached as Exhibit A and is
9 herein incorporated by reference.

10 14. Respondent was a tax partner at KPMG between 1998 and 2003, the period relevant
11 herein. Respondent participated in the above-described scheme, consisting of:

- 12 A. devising, marketing, and implementing the fraudulent tax shelters;
- 13 B. causing tax returns to be filed with the IRS that contained the fraudulent tax
14 shelter losses; and
- 15 C. fraudulently concealing those shelters from the IRS.

16 **FLIP, OPIS, BLIPS and SOS TAX SHELTERS**

17 15. The fraudulent tax shelter transactions which are the subject matter of this Accusation
18 were FLIP ("Foreign Leveraged Investment Program"), OPIS ("Offshore Portfolio Investment
19 Strategy"), BLIPS ("Bond Linked Issue Premium Structure") and SOS (Short Option Strategy).¹⁰

20 16. Respondent was involved in the marketing and implementation of the FLIP¹¹, OPIS¹²,
21 BLIPs and SOS¹³ transactions. Respondent was one of KPMG's major sellers of illegal tax

22 ⁹ See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11
23 of Stipulation AC-2006-28 for detail.

24 ¹⁰ During the relevant time period, KPMG personnel, some of its clients, and others
25 involved in these tax shelter transactions prepared, signed and filed tax returns that falsely and
26 fraudulently claimed over \$4.2 billion in bogus tax losses generated by FLIP and OPIS
27 transactions, and \$5.1 billion generated by BLIPS transactions. A significant proportion of the
28 tax payers who filed tax returns with KPMG's assistance using FLIP, OPIS, BLIPS, and SOS tax
shelters were California taxpayers. Approximately 29% of the transactions were in California
and approximately 38% of KPMG's fees originated in California.

¹¹ FLIP was essentially similar to OPIS. The shelters were designed to generate bogus
capital losses in excess of \$20 million through the use of an entity created in the Cayman Islands.
The client purportedly entered into an "investment" transaction with the Cayman Islands entity by
purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity
purportedly made a pre-arranged series of investments, including the purchase, from a bank, of

(continued...)

shelters to high net worth individuals. Respondent was involved in 6 FLIP transactions, 20 OPIS transactions, 47 BLIPS transactions, and 24 SOS transactions.

17. The law in effect from at least in or about August 1997 provided that if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties, ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax benefit was supported by an independent opinion relied on by the taxpayer in good faith that the tax benefit was "more likely than not" to survive IRS challenge.

FLIP and OPIS SHELTERS

18. In most material respects, FLIP and OPIS were the same. FLIP and OPIS were generally marketed only to people who had capital gains in excess of \$10 million for FLIP and \$20 million for OPIS.¹⁴

19. Respondent was highly involved in marketing and implementing FLIP and OPIS transactions. As a member of CaTS and IS, Respondent was responsible for marketing, and implementing FLIP and OPIS tax shelters for individual clients. The FLIP and OPIS opinion letters falsely asserted that tax positions taken were "more likely than not" to prevail against an IRS challenge if the true facts regarding those transactions were known to the IRS. The FLIP

(...continued)

bank stock using money purportedly loaned by the bank, followed by a repurchase of that stock by the pertinent bank at a prearranged price. The tax shelter transactions were devised to last for only approximately 16 to approximately 60 days, and the duration of the shelter was pre-determined.

¹² OPIS was essentially similar to FLIP, described in the footnote above. KPMG's gross fees from OPIS transactions were at least \$28 million.

¹³ The SOS shelters were referred to by various names, including Short Option Strategy, Spread Option Strategy, Split Option Strategy, SOS, Binary Option, Digital Option, Gain Mitigator, Loss Generator, COINS, BEST, and FX Transaction (hereinafter "SOS"). The SOS shelters generated at least \$1.9 billion in phony tax losses. KPMG's gross fees from SOS transactions were at least \$17 million. SOS was marketed and sold from at least in or about 1998 through at least in or about 2002 to at least 165 wealthy individuals.

¹⁴ In return for fees totaling approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, KPMG, its KPMG tax personnel and their associates implemented and caused to be implemented FLIP and OPIS transactions and generated and caused to be generated false and fraudulent documentation to support the transactions, including but not limited to KPMG opinion letters claiming that the purported tax losses generated by the shelters were "more likely than not" to withstand challenge by the IRS. As agreed to, and arranged by, KPMG tax personnel, outside lawyers also issued "more likely than not" opinion letters in return for fees typically of approximately \$50,000 per opinion, which opinions tracked, sometimes verbatim, the KPMG opinion letter.

1 transactions were continued to be sold even after an e-mail written in March 1998 by KPMG's
2 Tax Services Practice's second in command, Bob Simon, identified a host of significant technical
3 flaws in FLIP. Respondent signed at least one FLIP opinion (after the above mentioned Bob
4 Simon Email) and was the engagement partner in three others. Respondent signed at least 16
5 OPIS opinions. Respondent was involved in FLIP and OPIS although he knew, among other
6 things, that tax positions taken were not "more likely than not" to prevail against an IRS
7 challenge if the true facts regarding those transactions were known to the IRS. The opinion
8 letters and other documents used by Respondent to implement FLIP and OPIS were false and
9 fraudulent in a number of ways, including that:

10 a. Money was paid by the FLIP and OPIS clients for an "investment" component
11 of the transactions (a warrant or a swap), whereas in fact that money constituted fees paid to
12 KPMG and other participants, as well as money that was temporarily "parked" in the deal but
13 ultimately returned to the client.

14 b. There was no evidence of a "firm and fixed" plan to complete the steps making
15 up the shelter in a particular manner when, in fact, there was such a plan, and the transactions in
16 fact were designed to be completed, and were completed, in the particular manner designed to
17 generate the tax loss.

18 c. The clients were not "more likely than not" to survive an IRS challenge (based
19 on the "step transaction doctrine").¹⁵

20 **BLIPS SHELTER**

21 20. KPMG and its tax personnel and associates marketed and caused to be marketed, and
22 implemented and caused to be implemented the transactions, and generated and caused to be
23 generated false and fraudulent documentation to support the BLIPS transactions. This activity
24 included, but was not limited to, generating KPMG opinion letters (and opinion letters by law
25 firm(s)) that claimed that the purported tax losses generated by the shelters were more likely than
26 not to withstand challenge by the IRS. All of these opinion letters were almost identical.

27 ¹⁵ The "step transaction doctrine" is a legal doctrine permitting the IRS to disregard
28 certain transactions having no economic substance or business purpose and the purported tax
effects of those disregarded transactions.

1 21. Respondent was highly involved in marketing and implementation of BLIPS
2 transactions.¹⁶ Respondent was involved in implementing numerous BLIPS transactions for
3 KPMG clients. Respondent personally signed 31 BLIPS opinion letters and was the engagement
4 partner on five more. Respondent used false and fraudulent documentation to support the BLIPS
5 transactions. This activity included, but was not limited to, generating KPMG opinion letters
6 (and opinion letters by law firm(s)) that claimed that the purported tax losses generated by the
7 shelters were "more likely than not" to withstand challenge by the IRS. All of these opinion
8 letters were almost identical.

9 22. Respondent signed BLIPS opinion letters, although he knew or should have known
10 that (i) the tax positions taken were not "more likely than not" to prevail against an IRS challenge
11 if the true facts regarding those transactions were known to the IRS, and (ii) the opinion letters
12 and other documents used to implement BLIPS were false and fraudulent in a number of ways,
13 including but not limited to the following:

14 a. BLIPS was falsely described as a three-stage, seven-year investment program,
15 when in truth and in fact, all participants were expected to withdraw at the earliest opportunity
16 and within the same tax year in order to obtain their tax losses. BLIPS was falsely described as a
17 "leveraged" investment program, whereas, in fact, the purported loan transactions that were part
18 of BLIPS (and that were the aspect of BLIPS that purported to generate the tax loss) were shams -
19 - no money ever left the bank and none of the banks assigned any capital cost to these purported
20 BLIPS loans.

21 b. The BLIPS opinion letters falsely stated that the client (based on the client's
22 purported "independent review," as well as that of outside "reviewers") "believed there was a
23 reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions," when
24 in truth and in fact, there was no "reasonable likelihood of earning a reasonable pre-tax profit"

25 ¹⁶ BLIPS generated at least \$5.1 billion in bogus tax losses. KPMG's gross fees from
26 BLIPS transactions were at least \$53 million. Associated law firms and boutique practices had
27 gross fees of at least \$147 million. The fees totaled approximately 5-7% of the desired tax loss,
28 including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, a fee to a
"boutique practice" equal to approximately 2.75% of the desired tax loss, and a fee to a law firm
generally equal to \$50,000 per transaction.

1 from BLIPS, and instead the "investment" component of BLIPS was negligible, unrelated to the
2 large sham "loans" that were the key elements of the purported tax benefits of BLIPS, and was
3 simply window dressing for the BLIPS tax shelter fraud.

4 c. The opinion letters and other documents were misleading in that they were
5 drafted to create the false impression that KPMG, its tax personnel, and others associated with the
6 tax shelter scheme were all independent service providers and advisors, when in truth and in fact
7 KPMG personnel and associates jointly developed and marketed the BLIPS shelter.

8 23. At various points during the development of BLIPS, KPMG tax personnel identified
9 various significant defects of BLIPS, including that the description of BLIPS and the factual
10 representations contained in the BLIPS opinion letter and in other documents were false.
11 Nevertheless, the firm marketed BLIPS. Likewise, the risks of proceeding with implementation
12 of BLIPS in 2000 were discussed. Nevertheless, and despite the obviously fraudulent nature of
13 BLIPS and the warnings conveyed, KPMG tax personnel decided not to refund BLIPS fees and to
14 proceed with the issuance of "more likely than not" opinion letters on all of the 1999 transactions
15 with the intent that BLIPS clients would claim the bogus BLIPS losses on 1999 tax returns.
16 KPMG tax personnel, including Respondent, and others continued to be involved in the
17 implementation of more BLIPS tax shelter transactions in 2000 and, in 2001.

18 **SOS SHELTER**

19 24. SOS and its variants were designed to generate substantial capital and ordinary tax
20 losses through a series of pre-arranged transactions that involved the clients "investing" in
21 virtually offsetting foreign currency option positions with a bank, sometimes transferring the
22 offsetting positions to a partnership or other entity, and then withdrawing from the transaction,
23 claiming a loss in the desired amount.

24 25. Respondent signed at least 3 SOS opinion letters. Respondent was the engagement
25 partner for 20 SOS transactions. SOS opinion letters, and other associated documents, were false
26 and fraudulent in a number of ways well known to Respondent and other KPMG personnel,
27 including the following:
28

1 a. They falsely and misleadingly described SOS as an investment, when in
2 truth and in fact, it was a tax shelter designed and marketed to generate tax losses in order to
3 eliminate income taxes for wealthy clients and garner substantial fees and income for KPMG and
4 others.

5 b. They falsely claimed that the client would have entered into the option
6 positions independent of the other steps that made up SOS, when in truth and in fact, the clients
7 would not have entered into those positions absent the anticipated tax losses to be generated.

8 c. They falsely claimed that the option positions were contributed to a
9 partnership or other entity to "diversify" the client's "investment" when in truth and in fact, the
10 contribution was simply a necessary step in the tax shelter, was executed for the purpose of
11 generating the tax loss, and was not executed to "diversify" any "investment."

12 d. They falsely claimed that the offsetting option positions were entered into
13 for "substantial non-tax business reasons," and were contributed to the partnership or other entity
14 for "substantial non- tax business reasons," when in truth and in fact, the transactions were
15 undertaken in order to generate the phony tax losses SOS purported to generate and not for any
16 "substantial non-tax business reason."

17 26. Respondent employed this false and fraudulent documentation in order to assist
18 clients in claiming the phony tax shelter losses on tax returns and in evading taxes. Respondent
19 issued opinion letters or caused others to issue opinion letters that falsely claimed that the tax
20 losses purportedly generated by SOS were more likely than not to withstand IRS challenge to
21 enable their fraudulent SOS tax losses and, thereby, evade taxes.

22 **FRAUDULENT CONCEALMENT OF TAX SHELTERS**

23 27. In addition to preparing, causing to be prepared, and approving the false and
24 fraudulent documentation relating to and implementing the shelter transactions, Respondent
25 participated in steps taken to fraudulently conceal from the IRS the fraudulent tax shelters, and/or
26 knew or should have known that the steps would have the effect of concealing the shelters from
27 the IRS. The steps taken included, but were not limited to, the following:

- 28 (1) Not registering the tax shelters with the IRS as required by law.

1 (2) Preparing and causing to be prepared tax returns that fraudulently concealed the
2 bogus losses from the IRS. Specifically, Respondent used a device called "grantor trust netting"
3 to conceal the tax shelters from the IRS. Respondent was informed that the use of grantor trust
4 netting on tax returns could be viewed as filing a false or misleading return.

5 **FAILING TO REGISTER TAX SHELTERS**

6 28. Under the law in effect at all times relevant to this Accusation, an organizer of a tax
7 shelter was required to "register" the shelter by filing a form with the IRS describing the
8 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
9 claiming a benefit from the shelter were required to include with their income tax returns a form
10 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
11 registration number. Notwithstanding these legal requirements, KPMG's tax personnel, including
12 Respondent, decided not to register the tax shelters based on a "business decision" that to register
13 the shelters would hamper KPMG's ability to sell them. Respondent knew or should have known
14 of the requirement to register the shelters.

15 **FIRST CAUSE FOR DISCIPLINE**
16 **Fraud in the Practice of Public Accountancy**
17 **[Business and Professions Code § 5100(c)]**

18 29. The matters alleged in paragraphs 11 through 28 are re-alleged as though fully set
19 forth.

20 30. Respondent's license is therefore subject to disciplinary action based on his direct
21 involvement and acquiescence in:

- 22 A. The decision of KPMG not to register the tax shelters as required;
23 B. The preparation of false or fraudulent documentation supporting the
24 implementation of the tax shelters; and
25 C. The signing of the tax opinions and tax returns containing the fraudulent tax
26 shelters.

27 31. Incorporating by reference the matters alleged in paragraphs 11-28, cause for
28 discipline of Respondent's license for fraud in the practice of public accountancy is established
under Code Section 5100(c).

SECOND CAUSE FOR DISCIPLINE
Dishonesty in the Practice of Public Accountancy
[Business and Professions Code § 5100(c)]

32. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for dishonesty in the practice of public accountancy is established under Code Section 5100(c) based upon his dishonest acts, and omissions in the course of his participation, as described above, in the FLIP, BLIP, SOS and OPIS tax shelters.

THIRD CAUSE FOR DISCIPLINE
Gross Negligence in the Performance of Public Accountancy
[Business and Professions Code § 5100(c)]

33. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for gross negligence in the practice of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted extreme departures from applicable professional standards.

FOURTH CAUSE FOR DISCIPLINE
Failure to Observe Professional Standards in Performance of Public Accountancy
[Board Rule 58/ Business and Professions Code § 5100(g)]

34. Complainant realleges paragraphs 11 through 28. Incorporating those matters by reference, cause for discipline of Respondent's license is established in that his failure to comply with professional standards applicable to public accountancy constitutes the willful violation of Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

FIFTH CAUSE FOR DISCIPLINE
Conspiracy with Unlicensed Person to Violate Accountancy Act
[Business and Professions Code §§ 125, 5100]

35. Complainant realleges paragraphs 11 through 28. Incorporating those matters by reference, cause for discipline of Respondent's license is established in that he conspired with unlicensed persons, including lawyers and others, to devise, market, and/or implement the fraudulent tax shelters, in violation of Code section 125. The conduct of Respondent, as alleged, constitutes general unprofessional conduct under Code section 5100.

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SIXTH CAUSE FOR DISCIPLINE

Repeated Negligent Acts in the Performance of Public Accountancy
[Business and Professions Code § 5100(c)]

36. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for repeated negligent acts in the performance of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted repeated departures from applicable professional standards.

SEVENTH CAUSE FOR DISCIPLINE

Breach of Fiduciary Responsibility in the Performance of Public Accountancy
[Business and Professions Code § 5100(i)]

37. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for breach of fiduciary responsibility in the performance of public accountancy is established under Code Section 5100(i).

EIGHTH CAUSE FOR DISCIPLINE

Knowing Preparation, Publication, or Dissemination of False, Fraudulent or
Materially Misleading Financial Statements, Reports, or Information
[Business and Professions Code § 5100(j)]

38. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information is established under Code Section 5100(j).

NINTH CAUSE FOR DISCIPLINE

Obtaining Valuable Consideration by False Pretenses
[Business and Professions Code § 5100(k)]

39. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for obtaining valuable consideration by false pretenses is established under Code Section 5100(k).

TENTH CAUSE FOR DISCIPLINE

Violation of Professional Standards
[Board Rule 58/ Business and Professions Code § 5100(g)]

40. Complainant realleges paragraphs 11 through 28 above. Incorporating those matters by reference, cause for discipline of Respondent's license for violation of professional standards

1 is established under Board Rule 58 and Code Section 5100(g) based upon his conduct, including
2 approving and causing to be signed, engagement and opinion letters for clients without
3 independently, diligently or accurately evaluating the specific needs and concerns of the clients,
4 which constitutes willful violation of Board Rule 58, providing cause for discipline of his license
5 under Code section 5100(g).

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PRAYER

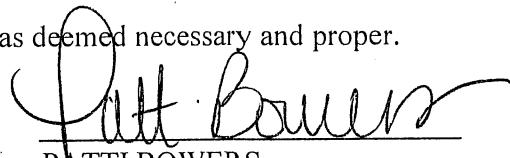
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountant Number 45770, issued to Carl Hasting.

2. Ordering Carl Hasting to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

Dated: February 2nd, 2010



PATTI BOWERS
Executive Officer
California Board of Accountancy

Complainant

SF2006401549